

REGENTS BOARD[681]

Notice of Intended Action

**Proposing rule making related to addresses and waivers
and providing an opportunity for public comment**

The Board of Regents hereby proposes to amend Chapter 18, “Declaratory Orders,” and Chapter 19, “Procedure for Rule Making,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 262.9(3).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 17A.

Purpose and Summary

The proposed amendments update addresses for the Board of Regents and Iowa State University and implement 2020 Iowa Acts, House File 2389, by removing references to “variances.”

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to rule 681—19.18(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on July 6, 2021. Comments should be directed to:

Aimee Claeys
Board of Regents
11260 Aurora Avenue
Urbandale, Iowa 50322
Phone: 515.281.6456
Email: aimee.claeys@iowaregents.edu

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 18.4(3), introductory paragraph, as follows:

18.4(3) A petition for intervention shall be filed at the office of the Board of Regents, ~~400 Court Avenue, Des Moines, Iowa 50319~~ 11260 Aurora Avenue, Urbandale, Iowa 50322, or, in the case of a matter assigned to an institution, to the person and address indicated in the notice of assignment of the petition. Such a petition is deemed filed when it is received by that office. The board of regents will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ITEM 2. Amend rule 681—18.6(17A) as follows:

681—18.6(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Executive Director of the Board of Regents, ~~400 Court Avenue, Des Moines, Iowa 50319~~ 11260 Aurora Avenue, Urbandale, Iowa 50322, or, in the case of a matter assigned to an institution, to the person and address indicated in the notice of assignment of the petition.

ITEM 3. Amend subrule 18.7(2) as follows:

18.7(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Board of Regents, ~~400 Court Avenue, Des Moines, Iowa 50319~~ 11260 Aurora Avenue, Urbandale, Iowa 50322, or, in the case of a matter assigned to an institution, to the person and address indicated in the notice of assignment of the petition. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board of regents or, in the case of a matter assigned to an institution, the president or superintendent.

ITEM 4. Amend subrule 19.3(1) as follows:

19.3(1) Docket maintained. The board of regents shall maintain a current public rule-making docket. The board of regents designates its director of legal affairs, human resources and information technology as its agency rules coordinator. Persons interested in information about rules being considered by the board of regents should contact the following office:

Board of Regents
~~Legal Affairs~~
~~400 Court Avenue~~ 11260 Aurora Avenue
~~Des Moines, IA 50319~~ Urbandale, IA 50322

Persons interested in information about rules being considered at each regent institution should contact the following offices:

University of Iowa
Office of University Relations
5 Old Capitol
Iowa City, IA 52242

Iowa State University

~~University Legal Services~~ Office of University Counsel
305 3550 Beardshear Hall
515 Morrill Road
Ames, IA ~~50010~~ 50011

University of Northern Iowa
Office of the Operations Auditor
242 Gilchrist Hall
Cedar Falls, IA 50614

Iowa School for the Deaf
Superintendent
1600 S. Highway 275
Council Bluffs, IA 51503

Iowa Braille and Sight Saving School
Superintendent
1002 G Avenue
Vinton, IA 52349

ITEM 5. Amend subrule 19.5(1) as follows:

19.5(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the office of the Board of Regents, ~~400 Court Avenue, Des Moines, Iowa 50319~~ 11260 Aurora Avenue, Urbandale, Iowa 50322, or the person designated in the Notice of Intended Action.

ITEM 6. Amend subrule 19.5(5) as follows:

19.5(5) *Accessibility.* The board of regents shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the office of the Board of Regents, ~~400 Court Avenue, Des Moines, Iowa 50319~~ 11260 Aurora Avenue, Urbandale, Iowa 50322, telephone (515)281-3934, in advance to arrange access or other needed services.

ITEM 7. Amend subrule 19.6(2), introductory paragraph, as follows:

19.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the board of regents small business impact list by making a written application addressed to the office of the Board of Regents, ~~400 Court Avenue, Des Moines, Iowa 50319~~ 11260 Aurora Avenue, Urbandale, Iowa 50322. The application for registration shall state:

ITEM 8. Amend rule 681—19.18(17A) as follows:

681—19.18(17A) Waiver ~~or variance~~ from rule.

19.18(1) *Applicability.* Waiver ~~or variance~~ from board of regents rules may be requested but only in the event that:

a. The board of regents has exclusive rule-making authority to promulgate the rule from which a ~~waiver or variance~~ is requested or has final decision-making authority over a contested case in which a ~~waiver or variance~~ is requested; and

b. No federal or state statute or rule otherwise controls the grant of a ~~waiver or variance~~ from the rule from which a ~~waiver or variance~~ is requested.

19.18(2) *Authority.* The board of regents, the president or superintendent of a regent institution, or designee, or the presiding officer as part of the decision in a contested case, may grant a ~~waiver of, or variance of, or variance from,~~ waiver of, all or part of a rule to the extent allowed by these rules.

19.18(3) Compliance with law. No waiver ~~or variance~~ may be granted from a requirement that is imposed by state or federal statute. Any waiver ~~or variance~~ must be consistent with state or federal statute.

19.18(4) Criteria. A waiver ~~or variance~~ under this chapter may be granted only upon a showing that:

a. The waiver ~~or variance~~ will not harm other persons and will not adversely affect the public interest; and

b. There are exceptional circumstances which justify an exception to the general rule to the extent that the requester is unable to comply with the particular rule without undue hardship or compliance with the particular rule would be unnecessarily and unreasonably costly and serve no public benefit.

19.18(5) Request. All requests for a waiver or variance must be in writing and shall include the following information:

a. The name, address, and telephone number of the person requesting the waiver ~~or variance~~ and the person's representative, if any;

b. The specific rule from which a waiver ~~or variance~~ is requested;

c. The nature of the waiver ~~or variance~~ requested, including any alternative means or other proposed condition or modification proposed to achieve the purpose of the rule;

d. An explanation of the reason for the waiver ~~or variance~~, including all material facts relevant to the grant of the waiver ~~or variance~~ in question;

e. Any information known to the requester regarding the board of regents, or any regent institution's, treatment of similar cases;

f. The name, address and telephone number of any person(s) with knowledge of the matter with respect to which the waiver ~~or variance~~ is requested; and

g. Any necessary release of information authorizing persons with knowledge to disclose relevant information necessary to a decision.

19.18(6) With whom filed. A request for a waiver or variance which pertains to a rule applicable to only a specific regent institution shall be submitted to the president or superintendent of that institution. A request for a waiver or variance which pertains to a matter involving more than one regent institution, or the board of regents or its staff, shall be submitted to the Executive Director, Board of Regents, ~~400 Court Avenue, Des Moines, Iowa 50319~~ 11260 Aurora Avenue, Urbandale, Iowa 50322. A request for waiver or variance which pertains to a pending contested case shall be filed in the contested case proceedings.

19.18(7) Ruling. Rulings on requests shall be in writing. The ruling shall include the reason for granting or denying the request and, if approved, the time period during which the waiver ~~or variance~~ is effective. Rulings on a waiver ~~or variance~~ shall be made in the following manner:

a. Requests submitted to the president or superintendent of a regent institution shall be decided by the president or superintendent, or designee.

b. Requests submitted to the board of regents shall be decided by the board, unless the board determines that the request was inappropriately submitted to it, in which case it shall forward the request to the appropriate decision maker as designated by these rules.

c. Requests submitted in a contested case shall be decided by the presiding officer in the contested case proceeding.

19.18(8) Public availability. All final rulings in response to requests for ~~waiver or variances~~ waivers shall be indexed and available to members of the public at the offices listed below:

Board of Regents

Legal Affairs

~~400 Court Avenue~~ 11260 Aurora Avenue

~~Des Moines, IA 50319~~ Urbandale, IA 50322

University of Iowa

Office of University Relations

5 Old Capitol

Iowa City, IA 52242

Iowa State University
~~University Legal Services~~ Office of University Counsel
~~305~~ 3550 Beardshear Hall
515 Morrill Road
Ames, IA ~~50010~~ 50011

University of Northern Iowa
Office of the Operations Auditor
242 Gilchrist Hall
Cedar Falls, IA 50614

Iowa School for the Deaf
Superintendent
1600 S. Highway 275
Council Bluffs, IA 51503

Iowa Braille and Sight Saving School
Superintendent
1002 G Avenue
Vinton, IA 52349

19.18(9) *Conditions.* The board of regents, or other designated decision maker allowed pursuant to these rules, may condition the grant of a waiver ~~or variance~~ on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

19.18(10) *Voiding or cancellation.* A waiver ~~or variance~~ is void if the material facts upon which the request is based are not true or if material facts have been withheld. The decision maker may at any time cancel a waiver ~~or variance~~ upon appropriate notice and hearing if it is determined that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver ~~or variance~~ have failed to achieve the objectives of the statute, or the requester has failed to comply with conditions set forth in the waiver ~~or variance~~ approval.

19.18(11) *Violations.* Violation of conditions in the waiver ~~or variance~~ approval is the equivalent of violation of the particular rule for which the waiver ~~or variance~~ is granted and is subject to the same remedies or penalties.

19.18(12) *Appeals.* Any request for an appeal from a decision on a waiver ~~or variance~~ request made by the board of regents, the president or superintendent of a regent institution, or designee, shall be in accordance with the procedures provided in Iowa Code chapter 17A.

Any request for an appeal from a decision by the presiding officer in a contested case proceeding which grants or denies a wavier ~~or variance~~ shall be made pursuant to the procedures provided in rule 681—20.26(17A) or ~~rule~~ 681—20.27(17A), as applicable.